

Joyce W. Lindauer
State Bar No. 21555700
Kerry S. Alleyne
State Bar No. 24066090
Guy H. Holman
State Bar No. 24095171
Joyce W. Lindauer Attorney, PLLC
1412 Main St., Suite 500
Dallas, Texas 75202
Telephone: (972) 503-4033
Facsimile: (972) 503-4034
ATTORNEYS FOR DEBTOR

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

FRISCO ACQUISITION, LLC,

Debtor.

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**CASE NO. 20-42257-btr
Chapter 7**

**DEBTOR'S MOTION TO STRIKE MOVANTS' SUPPLEMENTAL
AUTHORITIES IN SUPPORT OF AMENDED MOTION FOR RELIEF
FROM STAY TO PURSUE NON-BANKRUPTCY LITIGATION**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

Comes now Frisco Acquisition, LLC, debtor herein ("Debtor"), and files this Motion to Strike Movants' Supplemental Authorities in Support of Amended Motion for Relief from Automatic Stay to Pursue Non-Bankruptcy Litigation, and would show as follows:

1. Wanda Bertoia and WPB Hospitality, LLC (collectively, the "Movants") filed a Motion for Relief from Automatic Stay to Pursue Non-Bankruptcy Litigation on May 13, 2021 (Doc. No. 41). The Movants filed an Amended Motion for Relief from Automatic Stay to Pursue Non-Bankruptcy Litigation on July 7, 2021 (Doc. No. 68). A hearing on the Amended Motion is set for August 13, 2021 at 10:00 a.m.

2. On August 12, 2021 at 10:15 p.m., less than twelve hours before the hearing, three months after the filing of the original Motion for Relief from Automatic Stay, and five weeks after

the filing of the Amended Motion, the Movants filed a new nine-page pleading titled Movants' Supplemental Authorities in Support of Their Amended Motion for Relief from Automatic Stay to Pursue Non-Bankruptcy Litigation (Doc. No. 134, the "New Brief").

3. A quick scan of the New Brief indicates that it is full of new authorities and new arguments never presented to this Court or the Debtor until this late time and date. Much of this new material appears to be inaccurate, irrelevant, and mischaracterized. The Debtor cannot possibly review, research, and respond to the New Brief before the scheduled hearing. This is a blatant attempt by the Movants to conduct a "trial by ambush" which should not be allowed by the Court.

4. Due to the late surprise filing of the New Brief the Debtor requests the Court to strike the New Brief from the record. Such late filing was done without excuse.

WHEREFORE, PREMISES CONSIDERED, the Debtor requests the Court to enter an order striking the New Brief from the record and prohibiting the Movants from raising any of its contents at the hearing on the Amended Motion for Relief from Automatic Stay, and granting such other relief to which the Debtor may be entitled.

Dated: August 13, 2021.

Respectfully submitted,

/s/ Joyce W. Lindauer

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Kerry S. Alleyne

State Bar No. 24066090

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State Bar No. 24095171

Joyce W. Lindauer Attorney, PLLC
1412 Main St., Suite 500
Dallas, Texas 75202
Telephone: (972) 503-4033
Facsimile: (972) 503-4034
Email: joyce@joycelindauer.com
guy@joycelindauer.com
kerry@joycelindauer.com

ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

This is to certify that on August 13, 2021, a true and correct copy of the foregoing document was served via email pursuant to the Court's ECF system upon the parties receiving electronic notice in this case as indicated below.

Todd A. Hoodenpyle on behalf of Trustee
Christopher Moser
hoodenpyle@singerlevick.com,
scotton@singerlevick.com; tguillory@singerlevick.com

Larry A. Levick on behalf of Trustee
Christopher Moser
levick@singerlevick.com,
scotton@singerlevick.com; tguillory@singerlevick.com

John P Lewis, Jr. on behalf of Interested
Party Brett Payton
jplewisjr@mindspring.com

Joyce W. Lindauer on behalf of Debtor
Frisco Acquisition LLC
joyce@joycelindauer.com,
dian@joycelindauer.com; deann@joycelindauer.com; 12113@notices.nextchapterbk.com

Christopher Moser
cmoser@qslwm.com,
cmoser@ecf.epiqsystems.com; kimhill@qslwm.com; cjm@trustesolutions.net

Christopher Moser on behalf of Trustee
Christopher Moser
cmoser@qslwm.com,
cmoser@ecf.epiqsystems.com; kimhill@qslwm.com; cjm@trustesolutions.net

Patrick J. Schurr on behalf of Creditor WPB
Hospitality, LLC
patrick.schurr@solidcounsel.com,
kari.stanish@solidcounsel.com

Patrick J. Schurr on behalf of Creditor
Wanda Bertoia
patrick.schurr@solidcounsel.com,
kari.stanish@solidcounsel.com

US Trustee
USTPRegion06.TY.ECF@USDOJ.GOV

/s/ Joyce W. Lindauer
Joyce W. Lindauer